

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – NOVEMBER 17, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Chang (arrived at 7:03 p.m.; was not present for closed session items)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957
Public Employee Performance Evaluation: City Manager
Attendees: City Council, City Manager

CONFERENCE WITH LABOR NEGOTIATOR:

Authority: Government Code Section 54957.6
Agency Negotiators: City Manager; Human Resources Director

Executive Management Group 1-A

Chief of Police
Director of Business Assistance & Housing Services
Director of Community Development
Director of Finance
Director of Public Works/City Engineer
Human Resources Director
Recreation and Community Services Manager
Assistant to the city Manager
Council Services and Records Manager

Middle Management Group 1-B

Police Lieutenant
Deputy Director of Public Works
Program Administrator
Assistant Director of Finance
Chief Building Official
Planning Manager
Senior Civil Engineer
Senior Project Manager/Community Buildings
Budget Manager
Business Assistance and Housing Services Manager
Police Support Services Supervisor
Senior Planner
Project Manager
Utility Systems Manager
Recreation Supervisor
Secretary to the City Manager

Confidential Non-Exempt Employees Group 1-C

Administrative Analyst
Secretary to the City Attorney
Accounting Technician
Human Resources Assistant

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:02 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:05 p.m.

Council/Agency Member Chang entered and took her seat on the Dias.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Tatiana, a Live Oak High School student, led the Pledge of Allegiance.

RECOGNITIONS

Mayor Kennedy presented Certificates of Recognition to Fred Amoroso and Scott Schilling for their contributions to the hydro seeding with wildflower seeds to provide erosion control of new Monterey Road Underpass.

CITY COUNCIL REPORT

Mayor Pro Tempore Sellers reported on the Morgan Hill Downtown Association, indicating that he has been serving on the Downtown Association Board as the Council's representative for the past few years. He stated that there are three initiatives that the Association is in the process of undertaking: 1) Traffic calming, an effort to slow traffic down in the downtown area. He stated that he has not seen the justification for the elimination of lanes in the downtown, and felt that there were other traffic calming measures that can be undertaken with a workshop opportunity for the Downtown Association. 2) Third Street has been identified by the City to be a key corridor to the downtown area. This area can be used for multiple purposes and is key to economic development for the downtown. 3) Housing is something that the Association is just starting to look at, including ways where changes can be made within Measure C. He felt the City needs to look outside of Measure C and consider changes that would allow development of housing that is desperately needed in the downtown in order to make it successful. He currently serves on the Council's Economic Development Subcommittee, indicating that this subcommittee is involved in a variety of activities. He felt that keys to economic development success are: 1) wisely allocating the meager resources the City has available for economic development activities; and 2) evaluating projects that the Council undertakes with regards to a return on investment.

CITY MANAGER REPORT

City Manager Tewes addressed the Monterey Road underpass. He indicated that this project is not completed and that it requires work on the railroad bridge. He informed the public that there will be a period of time this Saturday where the Monterey Road underpass will be closed.

CITY ATTORNEY REPORT

City Attorney Leichter stated that she did not have a report to present this evening.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Earl Heinrich informed the Council that he received a ticket for parking his trailer in front of his house. He contacted the police department to inquire how long he could park his trailer in front of his home, being specific that it was a “trailer.” He was advised that he had 72-hours to park the trailer. After receiving a ticket, he went to the police department to try to get them to void the ticket as it was his belief that he should be able to park his trailer in front of his home. He recommended that trailers/RVs be allowed to park 24-hours in front of residences without being subjected to a ticket.

Andrew Poth thanked the Council, Department of Public Works, and Pacific Underground Construction for the recent work on the sewer upgrades on West Dunne and Alkire Avenues. He stated that this was a project that was long over due.

Bob Wylde requested that the Council move agenda item 23 forward.

Charles Weston addressed the ordinance that prohibits the POW/MIA flag from being flown in the City of Morgan Hill. He stated that the Planning Commission requested that a project proponent install a telecommunication flagpole. The project proponent stated that they would be willing to fly any flag the Commission so desired. As a Vietnam Veteran, he felt that it was an important to have a POW/MIA flag raised. He said that Planning Manager Rowe advised the Commission that it was against the City’s ordinance to fly the POW/MIA flag. Being close to Veterans Day, he felt that it was a good time to raise this issue. When he attended the Veterans Day ceremony, he noticed that the flag was being flown, a clear violation of the ordinance. He requested that the Council officially endorse the ability to fly the POW/MIA flag in the City of Morgan Hill.

No further comments were offered.

Mayor Kennedy indicated that there have been several requests to move items forward on the agenda. He stated that the Council has an adopted policy that states that public hearings are to be considered on or after 7:30 p.m. It not being 7:30 p.m., he recommended that agenda item 20 be considered at this time, followed by item 23.

Action: *It was the consensus of the City Council to **consider** agenda item 20 at this time, followed by item 23.*

City Council Action

OTHER BUSINESS:

20. COMMUNITY INDOOR RECREATION CENTER – BUDGET DIRECTION AT 75% CONSTRUCTION DOCUMENTS

Deputy Director of Public Works Struve presented the staff report, indicating that the project is on schedule. However, staff needs direction from the Council in order to remain on schedule. He informed the Council that staff has completed 75% construction drawing and that next month, 100% of the construction drawings will be completed along with a 100% cost estimate. He indicated that bid

documents would follow and that staff is proposing to advertise for bids in late January or February 2005; opening bids in mid-March. Staff would return to the Council requesting that it award a bid on April 6. He stated that he is unable to report to the Council that the project has an adequate budget attributed to: 1) market escalation in material costs that have exceeded the forecast, primarily attributed to the cost of steel and concrete; and 2) an adverse bidding climate for public projects that exist. He said that neither of these items were considered cost overruns to the indoor recreation center (IRC) or within the project team's control. He said that there have been examples and incidences where bids exceeded cost estimates by 50% in other similar-sized projects; individual trades within bids are providing costs 2-3 times greater than had been projected. To proactively address this issue and in an effort to place the City in the best position possible at bid opening, the project subcommittee considered several options. He referred to the matrix contained in the staff report labeled attachment C1 that identifies the options.

Mr. Struve indicated that the subcommittee recommends the following: 1) staff be directed to continue value engineering the project with a goal of saving an additional \$600,000-\$800,000 in project costs. This amount is added to the \$431,000 that has already been value engineered. Through value engineering, there could be a cost savings of \$1.2 million in project/construction costs. 2) Direct that Noll and Tam proceed to develop contract documents that would bid the gym as an alternate, indicating that elimination of the gymnasium would impact cost recovery negatively. He informed the Council that at the Parks & Recreation Commission meeting held last night, they reviewed the Council staff report and that they were not in support of bidding the gymnasium as a bid alternate, even under option A. 3) The Council commit \$1.2 million to be used, if needed, at time of project award but that the Council identify the sources of this money at a later date (e.g., following the January 2005 goal setting session). He advised the Council that all information being presented this evening is based on a 75% cost estimate, indicating that yet to follow is the development of the 100% cost estimate. 4) That the Council allows the project schedule to be elongated two months for rain delays that were not initially included in the construction schedule. This would revise the project completion date from June to August 2006.

Council Member Tate requested further information regarding the bid climate. He said that it may be true that contractors are under staffed at this point in time. He inquired as to the projected climate in the future. He did not understand why this project has to move forward quickly at this time as the climate may change and provide the City with a better bid.

Janet Tam informed the Council that she has spoken to a lot of construction cost estimators, contractors, and many of her construction managers. She stated that the index shows that construction materials are skyrocketing with no end in site. Therefore, construction costs would continue to climb given the current conditions. She did not believe that waiting would place the City in a more favorable position and that construction costs would get worse next year.

Council Member Tate noted that it was explained that construction firms are under staffed and that they have not yet recovered. However, he felt that it was implied that they would recover.

Chuck Davis informed the Council that in December 2003, you could purchase steel, delivered and fabricated, for \$1,800 per ton. Today, the price is somewhere between \$2,800 and \$3,200 per ton. This is over a 50% increase. He clarified that the cost escalations are attributed to both cost and labor. He informed the Council that China is purchasing all the steel that they can in the world market, indicating

that the country's mills are tapped out. He agreed that the rise in costs is not stopping. He said that he does not see so much of an increase in labor costs as is being seen in material costs. He indicated that there are other things taking place in California that are unique. One is that by the year 2013, all major hospitals have to be brought up to high seismic standards. This is a \$30 billion program that is well underway and that this has tapped out the subcontractor community. Therefore, one is not receiving competitive bids as subcontractors are busy with hospital work.

Ms. Tam stated that it was her understanding that California is at a point where there is not enough labor to accommodate all construction taking place. These shortages are affecting the bidding climate; therefore, individuals are bidding higher to cover the shortages.

Council Member Carr noted that \$630,000 has already been value engineered out of this project. He requested that Ms. Tam identify the items that were value engineered.

Ms. Tam indicated that the list of items that were value engineered range from \$600,000-\$800,000. She said that the design team is taking a conservative approach where it is assumed to be closer to \$635,000. She stated that the roof height of the gymnasium, multi purpose room, and the lobby were adjusted. They simplified the CMU patterning/complexity. The parking lot was consolidated so that it covers a smaller area, reducing some landscaping and site development/lighting. She said that there will be the elimination of the fireplace at the senior center, indicating that the seniors agree to its elimination. They will make sure that plumbing lines are efficient. She said that she has worked with the consultants on value engineering a lot of items that will not compromise the program and yet get the City what it needs.

Mayor Kennedy inquired whether thought was given to changing the materials of construction from steel to an alternate material(s).

Ms. Tam said that thought has been given to using alternate materials such as metal studs with a steel lateral system for lower structures; however, it may turn out not to be efficient. She said that the City should construct an auditorium and a gymnasium with durable materials and felt that CMUs are the most efficient and cost effective materials you can use.

Council Member Carr noted that one of the options before the Council is having the gymnasium as a bid alternate. He inquired whether there were other opportunities to have bid alternate options.

Ms. Tam stated that the design team/subcommittee is still including the operable wall in the multi purpose room as an option. If this item can be afforded when the bid comes in, it will be included. Another bid alternate would be project finishes. She said that the design team considered making the aerobics a bid alternate. However, there was not as much cost savings as associated with the gymnasium and would adversely affect cost recovery. The team also looked at shelling the gym as a bid alternate. The Council would then have to identify another source of funding to complete the gym at a later date.

Mayor Pro Tempore Sellers stated that the City is at a point where the integrity of the entire project would be at risk if further cuts were made. He noted that \$1 million in cuts have been made to the original plans. He said that there were two distinct components of this project that are vital to its success: 1) a senior and youth facility that is desperately needed in the community; and 2) the recreation

components that include the auditorium, fitness room and gymnasium. He felt that elimination of any of these items would impact cost recovery. He noted that the senior and fitness components and the recreation components have been integrated. Therefore, elimination of one component would be impeding the ability to recover costs and the ability to offer a variety of programs. He felt that it was important to point out that approximately one-third of the funds being requested this evening are for items that would help recover costs within a short period of time. He said that in the development of the IRC, thought was given to the items that could be added. He said that every day that this project is delayed results in costs going up. The variety of alternatives that were considered would require the City to go back and redesign the project or make design changes. He indicated that it would take time and money to redesign as costs will continue to rise. This is the reason the Parks & Recreation Commission is not recommending a gym alternate as they believe that the gym is integral to the entire facility and would add another \$125,000 in costs to proceed with a bid alternate. He felt that it was important to point out that the Council is being requested to commit to funding this evening but not to the source of funding. He noted that the Council will be reviewing its entire budget and its resources. He said that the Council has already begun to identify creative ways to find funds (e.g., private funding sources, etc.). He recommended that the Council allocate the funds necessary to make this the project the City committed to. He further recommended that the Council spend the next two-three months identifying the best way to do so.

Council Member Chang stated her concurrence with the subcommittee's recommendation.

Mayor Kennedy stated that he would be recommending that the Council not authorize the \$500,000 in contingencies being requested. He recommended that the City proceed with the bid to see where the market is at that time, noting that this is 4-5 months a way and that things can change drastically. This leaves a balance of approximately \$757,000 needed to proceed with this project. He recommended that \$757,000 be taken from the City's general fund reserves as the Council has prudently kept significant healthy reserves. He said that the City's projections show that over five years, the City would structurally be back in balance. He felt that it was appropriate to use the general fund reserves for one time costs such as this project.

Council Member Tate objected to the fact that the Council is not following its standard process. He noted that the Council holds discussions following public comment.

Mayor Kennedy opened the floor to public comment.

George Nale stated that he was speaking in defense of the library, if needed. He said that this Council, many in attendance, and the community have worked long and hard to fund the library that was promised as part of the Visioning process. He did not now whether the City was faced with losing a starter library. He felt that the reduction of a 40,000 square foot to a 28,000 square foot library has already contributed to the cause. He inquired why other projects could not do the same. He did not believe that the library should be at the bottom of the list.

Nancie Barker expressed concern that this project is already at a cost overrun and that it was her belief that it would continue to be at a cost overrun. She noted that the Council allocated \$17 million for the library. At the time, the Council discussed the possibility of cost overruns for the library. It was stated

that the size of the library would be shrunk to a size that can be afforded. It was her belief that the IRC facility should shrink the same way. She felt that the library is an important resource to the community and that it is vital to children and everyone in the community.

Charles Cameron expressed concern that the library size is currently inadequate. He noted that it is being stated that the IRC facility is at a cost overrun in the planning stage. He felt that RDA funds should be devoted to the library. If this is not what the Council wishes, he recommended that the City retain these funds for possible overruns for both the IRC and library facilities. He stated that overruns in construction today are certain. He indicated that a normal contingency is 5%-10%. However, if you start a project with a cost overrun before bidding, he felt that the Council should lower its sights rather than running out of money and lowering the sights even further for the library. He liked Mayor Kennedy's thoughts as far as funding for the IRC's additional costs.

Jeanne Gregg felt that it was very likely that the same construction escalation costs facing the IRC will be facing the library when it proceeds with construction. She understands that the Council is committed to doing as much as possible and wants to build both the library and the IRC facilities. She felt that thought needs to be given to the fact that it may not be possible to build both with the current amount of funding in place. She stated that she is cautious about using general fund monies to perform capital improvement projects. If it gets to the point where the City has to seriously evaluate how the remaining monies are to be spent and what will best serve the community, perhaps one consideration would be to have a brief moratorium on the decision this evening and allow the community to let the Council know which project is of high priority. She noted that the Visioning process is several years old with many citizens having been involved with it. She acknowledged that all Visioning projects are important but expressed concern that it may not be possible to build one of the facilities. She noted that when the current library was built, the City's population was at 8,000. Since that time, the police department has been expanded twice, public facilities have been remodeled, a modular unit was moved onto the civic center site and numerous schools have been built, noting that the community is still operating with the same library that served 8,000 individuals. She did not believe that a 28,000 square foot library would be adequate for the community.

Carol O'Hare indicated that she is the past president of the Morgan Hill Branch of the American Association of University Women and the President-elect for the Friends of the Morgan Hill Library. She expressed concern as to where the Council intends to get the additional \$1.2 million. She stated that the community has been promised a new 28,000 square foot library at a construction cost of \$17 million. She expressed concern that there may be increased costs associated with the library as is being seen with the IRC facility. Further, scaling back the library is unacceptable. She encouraged the Council to allocate some of the remaining RDA dollars for increased library construction costs at this time and not use it for any other construction costs now or in the future.

Marby Lee indicated that the community was promised a library and the Council pledged its support of the library not even a month ago. She has read that funds for the IRC may be taken from the library to make up the difference. She noted that the City recently completed the construction of an aquatics center and questioned why another toy is needed when the community already has a beautiful aquatics center. She requested that the Council give priority to making the library something special and not sacrifice it for something else as the Council promised a new library.

Brook Bailey stated that she was flabbergasted when she read in the paper that the Council was intending to eliminate the gymnasium from the IRC. She fought to get a gymnasium facility in the community center project and that she was assured 5-6 years ago that the community would be provided a gymnasium in the IRC. She stated that gymnasiums are at a premium in the community. She felt that there was a need of a gymnasium for low income youth in order to provide affordable recreational activities. She noted that 40 percent of the School District is comprised of Latinos, and yet she does not see Latinos being represented on the Council or the Youth Advisory Board. She recommended that the indoor pool facility be eliminated. She questioned how many pools a town of 35,000 citizens need, noting that they are extremely costly to build and maintain. She felt that the City needs to meet the needs of the less fortunate youth of the community.

Chuck Dillmann stated that he spoke a couple of weeks ago on behalf of the Library Commission. He said that both facilities have the potential of being critical to the development of the City and its citizens, especially the youth. He said that it appears that cost overruns have become a standard on every project in Morgan Hill. He recommended that the Council not move forward at this time and that it review past experience. Further, that the Council conducts a systematic evaluation, determining what is causing cost overruns. He suggested that the Council come up with a budget, a plan, and on schedule. It was his belief that should the Council continue to proceed the way it is heading, the City would be hearing about more overruns in the future and/or scale back of both projects.

No further comments were offered.

Council Member Chang inquired whether a 28,000 square foot library budgeted at \$17 million includes costs for contingencies. She noted that the Council is looking at approximately 15% contingency on the library project. Should the Council decide to use the \$1.2 million, it would not result in taking any money away from the Library project. In reading the subcommittee report, she felt that \$17 million is the appropriate funding for the library. She inquired whether the cost estimate for the library was correct.

Mayor Pro Tempore Sellers recollected that the cost for the library was \$14.5 million and that the Council allocated \$17 million.

City Manager Tewes said that the City will know whether there are cost overruns when the library project goes out to bid. He said that estimates depend on the design. He said that the library facility has a healthy contingency because as time proceeds, the City may need to utilize the contingency. He stated that the City is only two months away from bidding the IRC. He said that the estimates are greater for the IRC than it is for the library.

Mayor Kennedy did not believe that the contingency for the IRC needs to be as high, percentage wise, as it needs to be for the library. Therefore, the library, appropriately, has a higher contingency.

Council Member Chang inquired whether the Council could guarantee that it will never take away from the \$17 million earmarked for the library.

Mayor Pro Tempore Sellers and Mayor Kennedy confirmed that the Council committed \$17 million to the library project.

Council Member Tate said that in July 2004 the Council approved a \$17 million budget for the library. It was limited to \$17 million over his objection. He expressed concern that \$17 million may not be enough to build a library and that the Council is hearing that there is a concern about this in the community. In October 2004, the Council agreed to move full speed ahead with the library. At that meeting, the Council received recommendations from the Library Commission which he endorsed. He said that there was a lot of discussion about the recommendation that the library become the number 1 priority. He said that the Council tried to find a win win situation. The Council believes that the win win situation is such that the City can complete all projects and that all projects are number one priority as they are all equal. He respected this attitude and the consensus that was reached by the Council. However, he could not acknowledge that the Council can default priorities because of time sequence. He noted that the IRC is proceeding first and will come up as the number one priority. He stated that he endorses the IRC from the stand point that the Council made a commitment in the visioning process to supply a youth and senior center. He said that the Council is proposing to supply a lot of other items and make them available such as a gymnasium, pool, and cardio facility that are plentiful in the community. He noted that the price of the IRC keeps rising. He felt that the Council needs to sort out what the priorities are. In thinking of the priorities, he felt that they were all important. However, his priority keeps coming back to the library as being number one in priority. He stated that he could not support using general fund reserves when the Council is talking about going to the public a request for additional revenues to the general fund. He could not support the use of general fund reserves in this climate to fund a recreation center.

Mayor Kennedy felt that there was a way to proceed with both projects. He supported moving forward with the IRC, as currently designed, with the expectation that more value engineer is to occur. He would also support moving forward with the library, protecting the \$1.2 million in RDA funds that is sitting in reserve as well. He noted that the general fund has a current reserve balance of over \$9 million and that the City's average expenditures to the general fund are approximately \$19 million. This represents approximately 50% reserve in the general fund. He indicated that the City Manager has outlined a five year plan to bring the City's budget into balance, using some of the reserves and gradually reducing the reserves; even then, only to a level of 30%-40%. He stated that the Council's adopted policy allows it to reduce the reserves to 25%, indicating that this is a healthy reserve. By utilizing some of the excess reserves in place, he felt the City can proceed with both projects and that it will not place the City's general fund at risk. He felt that the general fund reserves can be used for other project expenditures, including the library. He stated that the most important use of the general fund reserves are for expenditures that would bring a return on investment. He noted that a portion of the proposed cuts are ones that would bring the City a return on investment. He felt that it makes sense to use the general fund reserves to reduce operating costs that would further bring the general fund closer to balance. Further, that it is appropriate to use general fund reserves for one time expenses that reduce the annual gap between revenues and expenditures in the general fund. He recommended that the Council move forward this evening by authoring \$757,000 of general fund reserves for this purpose.

Mayor Pro Tempore Sellers expressed concern that falsehoods keep perpetuating against the Council despite the actions and the firm decisions it has made. He tried to picture a scenario where seniors and

youths state that a library should not be built but that a senior center and youth center should be built instead. He said that before his term on the council is up, he is determined to have both projects built. It is not one project against the other or a false choice. He noted that the senior center facility was older and in much worst shape than the library. He said that his children would use the library more than it would the IRC, but that it does not mean that the community does not need an indoor recreation center. He said that the City learned significant lessons from previous projects undertaken. He said that the subcommittee conducted significant value engineering, cutting a large amount of funding. However, there are fundamental costs anticipated today. The City could have waited until the bid opening and be faced with cost overruns. He felt that the smart thing to do was to face the issues head on, early on, and identify how they will be addressed, providing sufficient contingencies. The Council will deal with this openly with the community at the front end versus the back end. He stated that he is fully dedicated to making sure that a 28,000 square foot library is built. He felt that it was equally important that the Council consider operations for the library. He noted that the Council has been consistent in its statements that the IRC needs to pay for itself. He expressed concern that his children would go into a library with empty shelves with 3 hours a week of open time because operations have not been planned. He felt that the community can do more to make sure that the library is opened full time and that there are enough books on the shelves. He agreed that it made sense to look at the general fund reserves; however, the Council has previously stated that it wants to look at the bigger picture of how it will fund projects. He recommended that the Council not make a decision on where the funds are to come from this evening, but that the Council looks at this in the larger context in January 2005. He felt that it was prudent to have \$500,000 in reserves to make sure that additional funding for the project does not go through this process again.

Action: *Mayor Pro Tempore Sellers made a motion, seconded by Council Member Chang, to approve staff's recommended actions this evening and to commit to those expenditures in the three different categories as outlined in the staff report.*

Council Member Carr indicated that he understands that the motion would commit the Council to finding money without stating where the money will come from. He was pleased that the subcommittee and staff prepared the sustainable building design features in the IRC facility. He wished that he held the line on sustainable building design for the aquatics center, making sure that solar systems, chemical systems and other items lowered operating costs today. He noted that these were items that the Council ended up cutting so that the project would not go over budget. He indicated that staff is recommending that these items be included up front in this case and stated his support of this recommendation. He inquired how the City can look at these items as being a revenue generating source. He said that a \$374,000 one time cost for sustainable items would provide approximately \$100,000 in operating and maintenance (O&M) cost savings every year. He inquired whether this can be considered a revenue stream from which the City can bond against for any potential overruns in the library or a funding stream that can be used for other funding decisions. If the Council is willing to get out of the discussion of "this project versus that project" and take a visionary step back, taking a look at the broader picture, the Council can consider more items like this. He stated that he would support the motion as it enriches the discussion and provides more opportunities for the City. He would like to know how the \$1.2 million in unallocated RDA funds, reserve funds and savings in O&M as revenue streams can be used to complete all projects.

Mayor Kennedy expressed concern with the motion. He felt that once a budget is set, it will get filled and become the new budget target. He would prefer to wait until the City goes out to bid in March 2005 to see what the market is and how the bids come in. He did not believe that there was a reason to make the decision at this time to add another \$500,000 based on a guess of what the market conditions will be five months from now. He suggested that the Council leave the \$500,000 out with the understanding that at such time that the bids come in; the Council can take a look at the funds. The Council will have completed its goal setting workshop and know what the City's budget situation will be and have established policy decisions on how to use funds for economic return and ways to cut operating costs. When bids come in, the Council can review whether it makes sense to add the additional \$500,000.

Mr. Struve stated that the project construction budget is at \$15,417,257 after value engineering the project. Once the project is awarded, staff has planned for an additional contingency. He said that typically, a 5% contingency is considered prudent given the experience with the aquatics center and the community & cultural center. Staff has included 5% for the course of construction for items that might come up. There is also a 3% City project contingency that is to be used for additional items. Therefore, the total contingency would be at \$1.76 million if you include the \$500,000 being requested this evening.

Mayor Pro Tempore Sellers stated that between now and February, he would like the Council to remove the acrimony that has been created every time this item comes forward. He said that there may be budget issues. However, if the Council clarifies where the funds will come from for a specific project, this may alleviate the concerns for subsequent projects.

Action: *Mayor Pro Tempore Sellers made a motion, seconded by Council Member Chang, to amend the motion to eliminate the additional \$500,000 in contingency funds with the understanding that staff may need to return for this funding, or some portion thereof, once the final bids are opened and known.*

Council Member Tate said that when you do not know the funding source it does not make a difference whether the contingency is \$700,000 or \$1.2 million. He noted that the Council has not had the discussion of where the money will come from such as RDA funding or general fund reserves. He stated that he could not support funding from either source; and therefore, could not support the motion.

Council Member Carr felt that the motion included contingency funding and that at the Council retreat to be held in January 2005 the Council would talk about the unallocated RDA funds. He noted that he offered a third suggestion for funding, taking a look at the sustainable items that are saving the City \$1.9 million in operating costs and how the City can turn this into a funding stream. He inquired whether the O&M budget from the IRC provides \$100,000 toward paying funds that would cover overruns at the library. He felt that there were other examples such as these that the Council should be talking about.

Mayor Pro Tempore Sellers said that the subcommittee talked about funding sources. The subcommittee has requested that the design team put together a list of items that might be attractive for private funding and/or sponsorship opportunities such as the scoreboard in the gymnasium and other items throughout the facility where the City can generate funding that would help pay for the construction as well as the ongoing operations costs.

Council Member Carr inquired whether the decision could be delayed until after the Council's goal setting session, and if so, what would it do to the project?

Ms. Tam responded that she has placed her consultants on hold for a couple of weeks until this meeting was held. She said that it would delay the process and would not allow the project to bid on schedule. Waiting until February 2005 would result in placing the project at further risk of losing money to escalation and would delay completion of the project.

Council Member Chang indicated that she spoke to council member-elect Mark Grzan this evening. She stated that it has been suggested that this item has been moved forward because this would be the last opportunity she would have to vote on it. It was felt that the Council was rushing the decision on this project so that the new council member would not have an opportunity to vote on the issue. She stated that she was disappointed with this comment. She asked council member-elect Grzan whether he had any objections to her voting on this item. Mr. Grzan said that he trusted her decision on this matter. She stated that she supports using \$700,000 from the general fund reserves. She indicated that she hates to see the library supporters fighting against the IRC supporters as there is no reason to do so. She noted that the City did not have a cost overrun with the community center while there was a slight cost overrun with the aquatics center. She stated that she is proud of the community center, playhouse and the aquatics center. She felt that it was unfair for those in attendance to state that the Council does not think about the library or that it is not a high priority.

Action: Council Member Chang withdrew her motion, therefore, the motion died for the lack of a second.

Action: Mayor Kennedy made a motion, seconded by Council Member Chang, to approve staff's recommended action, authorizing that \$757,000 can be funded from the general fund reserves and that the gymnasium is not to bid as an alternate.

Council Member Tate said that he has heard two potential sources of funding. He stated that he could not support the motion until he was convinced that there were no other funding sources; resulting in not needing to use RDA funds or general fund reserves.

Council Member Carr said that although the Council may end up using general fund reserves, it was short sighted of the Council to do so at this time. He felt that use of general fund reserves is a discussion that the Council needs to have. He felt that there were other possible funding alternatives that could be explored that would avoid risking the general fund or RDA reserves that could receive support from all Council members. He would hate to limit the possibilities, and felt that the Council could move forward this evening. However, he would like to have the discussion about use of reserves and other funding components to make sure that this project is funded as well as other projects. He would hate to continue to piecemeal projects as has been done over the years.

Mayor Kennedy said that every week delay results in additional costs to the project and that the City needs to move forward with the project. He felt that the Council has had several discussions on the City's budget with respect to a soft landing as outlined by the City Manager. Even with the soft landing,

there will be significant reserves remaining. Therefore, he did not believe that there was a reason to delay action.

Mayor Pro Tempore Sellers said that should the Council proceed this evening with the motion and that in subsequent discussions identifies outside resources, it was his belief that funds could be returned to the reserves.

City Manager Tewes said that the three motions made this evening talk about moving forward with the project and not making any appropriations. He clarified that the Council would be making a commitment as to where the funds would come from. He indicated that the City would not know the final costs until the bids are in. He said that a decision made this evening would result in moving forward with the project.

Mayor Pro Tempore Sellers agreed with the Parks & Recreation Commission that it is not prudent to design the gymnasium as a bid alternate.

Vote: *The motion carried 3-2 as follows: Ayes: Chang, Kennedy, Sellers; Noes: Carr, Tate.*

Redevelopment Agency Action

OTHER BUSINESS:

23. WOODLANDS ESTATES REQUEST FOR ASSISTANCE

Business Assistance and Housing Services Director Toy informed the Council that this item is a request from Woodland Estates, a resident owned 284-unit park, for financial assistance to assist individuals who are unable to afford an increase in assessments associated with the Park. He indicated that over the last several months, the Woodland Estates Board of Directors and Finance Committee have been evaluating their financial position. They have determined that an increase of \$100 per month per unit in assessments is needed in order to build an adequate reserve for capital maintenance and to place them in a financial position to be able to refinance their debt on the Park that may due in 2012. He informed the Council that another option the Board is considering is increasing the assessments beyond \$100 per month per unit in order to build up adequate reserves for maintenance and capital repairs and to retire the debt by 2012. With either scenario, the Board is concerned that any increase in assessment at this level would create a hardship for some residents in the Park, thus, their request for financial assistance from the Agency. He indicated that 64 individuals out of the 284 residents contacted City staff to indicate that the increase could be a potential hardship. Should the Board pursue option 2, retiring the debt by 2012, would mean an Agency loan of approximately \$700,000 that would need to be made available to assist residents who need financial assistance. He stated that it is unclear how many residents would need financial assistance. The Board believes that a commitment from the Redevelopment Agency is needed at this time as it would allow the residents to consider this fact in their decision making process when they vote on the assessment at the end of this month. He said that while staff is concerned about the welfare of the residents in the park, specifically low income residents, staff believes that it might be premature for the Agency to commit funds at this time as staff does not know the level of assistance that will be needed or the type of program that needs to be structured. Staff

believes that there needs to be a demonstrated commitment, on the part of the residents, to resolve their financial situation before the Agency commits to any form of assistance. He informed the Agency that staff is recommending that it be allowed to explore other funding sources beside Agency funds (e.g., State HCD Mobile Home Park program). Time would also allow staff to structure a program and assess the level of assistance needed. It is staff's belief that it can come back to the Agency prior to March 2005 with findings and recommendations. It is felt that should the Park vote for an assessment, it would more than likely to take place in March 2005 and would coincide with a possible program. He said that Agency action would give residents some assurance that there is a possibility that there could be assistance to the households that would experience a hardship.

Vice-chairman Sellers noted that the Agency is being asked to proceed with the item this evening as residents want some assurance. He inquired whether it would be a de facto assurance to the park residents should the Agency Board take action and provide funding.

Mr. Toy stated that residents can take a vote without any assistance from the Agency. Should the majority of residents vote for an assessment, everyone would be responsible for paying into the assessment regardless of any other financing sources being made available. It is staff's belief that the residents should vote regardless of what is available as they need to do what is in the best interest of their Park. Taking a vote on an assessment would be a level of commitment, by a majority of the residents, to help resolve their financial positions. In which case, City staff would have some time to develop a program that may be able to address their needs. He stated that staff does not know whether it can provide full financing for the assessment, or whether it would be a deferred amortized assessment or state funding.

Mayor Kennedy opened the floor to public comment.

Marguerite Sinnett, Chair of the Woodland Estates Finance Committee, informed the Agency that the residents will be voting on Monday whether or not they want to retire the mortgage and pay a special assessment over the next seven years to do so. If residents chose not to retire the mortgage, the residents will have to place themselves in a position to be able to qualify for a new mortgage and increase the reserve funds in order to be attractive to a lender. This would result in a rent increase that the Board would institute and that it would not be something the residents would vote upon. She indicated that the existing mortgage is seven years old with seven years remaining before the first available call date for a balloon payment of \$3.5 million in 2012. She stated that the residents will be voting on whether they want to pay a special assessment now in order to pay off the 10% they are allowed to pay each year for the next seven years and have enough to pay off the last payment and be debt free in seven years.

Vice-chairman Sellers expressed concern that the residents be provided with full information and have a clear understanding of what, if anything, the City will do. He understands that the residents want to hear more from the City before proceeding. He said that it is hard for the Agency to state the appropriate action to take. He stated that an issue was brought to his attention by a resident(s) of the Park that caused him concern. It was brought to his attention that the president of the Park wrote to all the residents, sometime last month, indicating that the Mayor was committed to doing whatever it took to help them in this matter. He inquired whether this was the case. If so, he wanted to get a sense from the officers and the residents what this commitment entailed, if anything. He inquired whether such a letter existed.

Ms. Sinnett responded that the Park's president did send a letter, indicating that the residents have never been told that the City would guarantee to help the residents. The residents have been told that the Board has been in touch with the City and that the City would not make a decision until a vote is taken. Once the vote is in and the City determines how many individuals need assistance and determines how much money is involved, the City would make a decision at that time.

George Hague, president of the homeowners association, stated that at no time did the Board commit the City. He said that the Board wanted to investigate the issue before moving forward. He said that the Board has always had the best interest of the residents in mind and will continue to look out for the welfare of the residents.

Vice-chairman Sellers felt that it was vital that the residents be provided with all the information available if the residents are going to be voting. Residents need to be clear, what, if anything, the City may do. He wanted to get a clear sense of what has been told to residents so that they are not voting on the matter based on one thing only to turn around and find out that there was an implied commitment by the Agency.

Mr. Hague informed the Agency that the residents have been well informed and that four meetings have been held.

Chairman Kennedy indicated that the letter was brought to his attention. He contacted Mr. Hague to find out more about the letter. He requested that he be provided the name of a contact person from the Finance Committee. He stated that he put this person in touch with City staff. City staff followed up by scheduling a meeting. He said that at no time did he commit to anything other than that the City would meet with the homeowners association to explore the issues and what, if any, the City might be able to do. He indicated that this meeting is a follow up to the meeting staff held with the residents.

Vice-chairman Sellers felt that it was vital that the City makes sure that the residents are not proceeding with a misunderstanding as to what the Agency can do, if anything.

Ms. Sinnett said that following the meeting with City staff, the Board of Directors and the Finance Committee, a letter was sent to the residents indicating the outcome of the meeting. It was stated that the City would make no commitments until a vote was taken, understand how many residents qualified for assistance, and how much money was involved.

Gloria Subocz, Woodland Estates resident, expressed concern with what has transpired in the Park. She stated that residents were told that there would be a \$50 per month increase to be set aside for whatever funding was needed. Within 30 days, residents were hit with the idea of retiring the mortgage, resulting in an additional \$150 per month being needed. She said that the majority of the residents she has spoken to are not willing to take this action. At one of the meetings she attended, it was stated that if the vote was not positive, residents would see a raise anyway. She did not believe that this was a viable approach. She felt that Park residents are able to meet its financial obligations/responsibilities. She felt that this was a well run Park. However, she expressed concern with the way that the issue is progressing as she did not believe that it was being done in a fair way. She felt that residents were being "railroaded"

with what is supposed to be a retirement of the mortgage. She inquired why a pre payment penalty and/or balloon payment were included with the original financing on the Park. She said that the Park has a management team located down south that is costing residents \$3,000 per month and that the Board hired a good management firm.

Bob Wylde, Woodland Estate resident, stated his opposition to retiring the mortgage in seven years. He also opposed additional monthly charges to this end as it is not needed. He addressed the fuzzy math that was going around, indicating that the Park was recently evaluated. Each lot in the Park has been valued at \$140,000, including the infrastructure by the County. This equates to \$40 million. If the residents have to refinance a loan at \$3.5 million, it would result in 88% protected equity. He said that the capital replacement is low at \$500,000. However, the increased monthly assessment of \$50 per month would result in more than \$1 million in reserves over 7.5 years when the Park needs to refinance. This would be in addition to the \$500,000 and felt that it was sufficient for reserves. The first lender he visited was anxious to give the Park a 6.5% fixed commercial loan. He felt that the Park is in an excellent financial condition and that it should remain as such. He felt that there should be a stop to alarming residents. He thanked the Agency for considering the loan, but that he did not believe that residents need the loan.

Margaret Schreck indicated that the park was built in the 1970s as a commercial park and that in 1986 was converted to a resident own park. Because of the park's age, it has a deteriorating infrastructure that is beginning to cost the residents a great deal of money in repairs and replacements as well as interruption of basic services such as water and electricity. After the park was converted to a resident park, the prevailing philosophy of the boards since inception until February 2004 has been that the mortgage does not need to be retired as it can be paid forever. Also, assessments do not need to be raised. She felt that this worked as long as the corporation had shares to sell and the sale of shares were added to operating expenses and artificially supported low assessments that have been paid in the Park since its formation in 1986. She indicated that this board was seated in February 2004. A few months into its term, the Board appointed a finance committee whose first job was to look at income and expenses and return with a recommendation. It was pointed out that the park was operating at a loss for three of the last five years and that the Board needed to collect more money from the residents/shareholders to meet expenses and to add to a seriously under funded reserve. The board took the committee's recommendation and sent out a 90-day notice that rents would be raised \$50/month taking affect October 1, 2004. The board gave the finance committee a second shore to look into the future and advise the Board what it needs to prepare for. It was recognized that there was a previously unperceived problem that there is a potential risk, in 2012, that the lender would call for the balloon payment or total repayment of the loan. The board spoke to the lender who has advised them of his criteria. She felt that there is every indication that the residents are in a favorably financial position to obtain refinancing. She indicated that the finance committee, the management company and the Board believe that this is the best course of action. She said that there has been a lot of correspondence generated by individuals in the Park of one or opinion or another. She said that there may have been a resident who indicated that Mayor Kennedy would be providing financial assistance, but that the comment did not come from anyone representing the corporation.

No further comments were offered.

Agency Member Chang noted that the Agency Board is only considering a way to assist the Park residents who cannot pay the additional assessment and is not making any other decisions for the residents.

Chairman Kennedy noted that staff is recommending that the Agency Board provide the residents with some assurance that staff will be looking into providing levels of support for low income residents.

Agency Member Tate stated that by following staff's recommended action the Agency Board is not stating anything definitely. He inquired whether parameters could be included in the motion to be taken.

Chairman Kennedy suggested that the Agency Board make a clear statement that there is no assurance that the City would be able to provide any form of assistance until such time that staff has the opportunity to look at available funding sources. He noted that there is not enough time to investigate other funding sources as this issue was recently brought to the City's attention.

Vice-chairman Sellers said that there is an implication that the City will provide funding if it can be found. He felt that there was still more information to gather. He was not convinced that the \$150 increase per month was the appropriate level as residents have made arguments on both sides. He felt that the Agency Board would be stating that if funding is found, the City would be assisting those residents who are least able to pay. This is acceptable if it is found that the \$150 per month is the correct way to proceed and everyone agrees to it. However, he did not believe that it was appropriate if the City is only assisting a few residents in the refinance to make it easier down the road. He expressed concern that the Agency Board would be making a commitment by pursuing the issue at this point. He recommended that the Agency wait until the park residents vote and then direct staff to look at the vote, identifying what the vote entails. Staff can return to request that the Agency Board consider options to assist residents who are least able to pay increased assessments.

Agency Member Carr felt that the best action for the Agency Board is to take no action. He recommended that the residents take the vote in order to determine how they want to proceed. He did not know whether one form of assistance is better than the Agency's assistance. He did not want to lead the residents down a path assuming that the City would be able to assist them when the City does not know if it can provide assistance.

Agency Member Chang inquired whether there was any intent, on the Agency's part, to assist should residents return to ask for assistance.

The Redevelopment Agency Board indicated that it would be their hope to assist, if possible, should the residents return to seek assistance.

Chairman Kennedy stated that no action would be taken until such time that the Woodland Estates takes action. The residents can return to the Agency Board for further discussion(s).

Action: *No action taken.*

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-10 as follows:*

1. **OCTOBER 2004 FINANCE & INVESTMENT REPORT**
***Action:** **Accepted** and **Filed** Report.*
2. **PERFORMANCE MEASURE UPDATE – FIRST QUARTER FISCAL YEAR 2004-2005**
***Action** **Accepted** and **Filed** Report.*
3. **ANNEXATION APPLICATION, ANX-02-02: COCHRANE-BORELLO 11**
***Action:** **Adopted** Resolution No. 5858, Approving Annexation.*
4. **FIRST QUARTER REPORT ON 2004-2005 WORKPLAN**
***Action:** **Accepted** Report.*
5. **ADOPT PARKS MAINTENANCE STANDARDS**
***Action:** **Approved** the Parks Maintenance Standards as Recommended by the Parks and Recreation Commission.*
6. **EMERGENCY AUTHORIZATION FOR PLACEMENT OF SLOPE EROSION PROTECTION**
***Action:** 1) **Adopted** Resolution No. 5859, Declaring an Emergency for Placement of Slope Erosion Protection on Slopes at the Monterey Road Underpass; and 2) **Appropriated** \$8,000 from the Unappropriated Fund 346 (Measure C-Capital Improvement Project) Fund Balance for the Project.*
7. **FINAL MAP APPROVAL FOR SAN PEDRO VILLAS, PHASE II (TRACT 9640)**
***Action:** 1) **Approved** the Final Map, Subdivision Improvement Agreement and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following the Recordation of the Development Improvement Agreement.*
8. **FINAL MAP APPROVAL FOR QUAIL MEADOWS, PHASE II (TRACT 9598)**
***Action:** 1) **Approved** the Final Map, Subdivision Improvement Agreement and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following the Recordation of the Development Improvement Agreement.*

9. **ADOPT ORDINANCE NO. 1701, NEW SERIES**

Action: *Waived the Reading, and Adopted Ordinance No. 1701, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMP-03-01: NATIVE DANCER – QUAIL MEADOWS (APN 779-02-014) (DA-03-09: NATIVE DANCER – QUAIL MEADOWS).***

10. **ADOPT ORDINANCE NO. 1702, NEW SERIES**

Action: *Waived the Reading, and Adopted Ordinance No. 1702, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING TITLE 17, CHAPTER 17.20 OF THE MORGAN HILL MUNICIPAL CODE, THE SUBDIVISION ORDINANCE, REPEALING SECTION 17.20.110, REQUIRING CITY COUNCIL REVIEW OF TENTATIVE SUBDIVISION MAPS.***

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the City Council/Agency Board unanimously (5-0) Approved Consent Calendar Items 11-12 as follows:*

11. **JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MINUTES FOR MEETING OF OCTOBER 27, 2004**

Action: *Approved the Minutes, as amended.*

12. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MINUTES FOR MEETING OF NOVEMBER 3, 2004**

Action: *Approved the Minutes as written.*

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) Approved Consent Calendar Items 13-14 as follows:*

13. **OCTOBER 2004 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT**

Action: *Accepted and Filed Report.*

14. LEASE WITH THE CALIFORNIA YOUTH SOCCER ASSOCIATION (CYSA)

Action: 1) **Approved** the New Lease Agreement with CYSA for the Property Located at 16545 Murphy Avenue; and 2) **Directed** the Executive Director to do Everything Necessary and Appropriate to Execute the New Lease Agreement, Including Making Modifications, Subject to Review and Approval by Agency Counsel.

Council/Agency Member Chang excused herself from the remainder of the meeting (9:23 p.m.).

City Council Action

PUBLIC HEARINGS:

15. APPEAL OF FINDING OF INCONSISTENCY WITH THE GENERAL PLAN AND REJECTION OF MEASURE C APPLICATION MC-04-18. APPEAL APPLICATION, AP-04-04: MONTEREY-VIOLA – Resolution No. 5860

Planning Manager Rowe presented the staff report, indicating that the applicant is appealing the planning officer's determination that the proposed residential development is inconsistent with general plan and zoning regulations. He informed the Council that the project, as proposed, does not meet the minimum density requirements for the zoning of the area. He identified possible modifications to have the project conform (e.g., allow an additional unit to the project or allow the proposed right of way dedication of 64 feet to be increased to 72-feet). He stated that when you subtract the additional land to be deeded to the city for street purposes, it would bring the project density over the five units per acre required.

Mayor Kennedy opened the public hearing.

Vince Burgos, Development Processing Consultants, said that it was a surprise to him and the applicant that they had provided a plan that offered too much open space and not enough units. He indicated that when the applicant originally came to his office, the applicant anticipated a greater number of units and that he advised the applicant that the collector street would need to be extended to connect to Llagas Creek Drive in order to conform to the general plan. He did not know that the project would be in this situation today. He informed the Council that the adjacent property owner decided that he did not want to subdivide his property at this time and pulled out of the application process when the project was being designed. He stated that he had a 72-foot right of way for the 38 unit project, exceeding five units to the acre. When the plans were finalized, the right of way became 64 feet, making the project 5/100 of a unit short in meeting the general plan/zoning requirements. He said that if you look at the 38 units proposed under this application and the 5 units that the .9 acre adjacent parcel would develop, it would conform to the general plan. Therefore, the overall area will conform to the general plan at build out. He requested that the Council allow the project to proceed. He stated that an adjustment can be made to the plans to provide a 72-foot right of way as a minor adjustment.

Gary Viola stated that this project is being processed for his dad who will turn 90 years old in March 2005 and is dealing with health issues. He said that it is important to have the project scored to show his father that something is being done with the property.

Bill McClintock, MH Engineering, indicated that the master plan includes the .9 acre parcel located to the north and that the master plan for this development provides utilities and street access. He stated that this is a development plan that meets the general plan density requirement. He said that if you read the general plan, it states 5-14 units per acre, noting that this project proposes 4.9 units to the acre. He felt that 4.9 units is 5-units to the acre. He felt that the math would allow this project to meet the general plan.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, made a finding that the project can meet the 72- foot right of way requirement and **Adopted** Resolution No. 5860A, granting the appeal.*

16. APPEAL OF FINDING OF INCONSISTENCY WITH THE GENERAL PLAN AND REJECTION OF MEASURE C APPLICATION MC-04-16. APPEAL APPLICATION, AP-04-05: EAST FIRST – SHERMAN HOUSE ASSOCIATES – Resolution No. 5861

Planning Manager Rowe presented the staff report, indicating that this is a vertical mixed use project on a 1+ acre site in the central commercial-residential zoning district. As proposed, at 15 units, it would translate to 1 dwelling unit for every 1,355 square feet (32 dwelling units to the acre). In order to conform to the general plan and zoning limits, the project cannot exceed 10 dwelling units per acre. He informed the Council that the project's representative believes that the project is consistent with the planned density for the downtown. He indicated that the City is in the process of updating the Downtown Plan and that the Plan identified a number of opportunity sites for higher density of approximately 35-40 dwelling units per acre. He indicated that this project is not being recommended as one of the opportunity sites. Should the Council believe the site to be appropriate for higher density; the applicant should be encouraged to withdraw the current application and pursue higher density through a general plan amendment process. Should the Council approve the amendments, the applicant could return in the downtown competition or the next competition with a higher density proposal. He indicated that one item came up with the scoring process this afternoon that being that in this area, the sewer mains serving the commercial properties on Monterey Road extends behind the buildings. Therefore, there would be problems with building units on top of the sewer mains and would require relocation of the sewer mains. He acknowledged that the sewer line issue was not the basis for the rejection of the Measure C application and should not be considered by the Council this evening.

Mayor Kennedy opened the public hearing.

Charles Weston, project architect, acknowledged that this was not identified as an opportunity site but that it was a potential site as the property owner was not in place at the time. He said that this is a unique project as it is located in the downtown where other opportunity sites other than the Sunsweet site are located at the periphery of the downtown. He felt that it was the intent of the Measure C update to intensify the downtown and to lessen the impact to the surrounding agricultural areas. This would establish a place where residents can be located in the downtown and provide for retail/office space;

making the downtown thrive. He said that this project proposes parking underneath the building and would clean up a blighted area. The project is proposing 15 units, 5 units over the zoning ordinance limitations. He noted that there are not many downtown projects committed to this year's competition. He requested that the Council allow the 15-unit and additional office space project to move forward.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers said that earlier this evening he identified activities he was involved with. He noted that the Council has dedicated itself to increasing densities in the downtown while on the other hand; Measure C states that the City is to build out and to have higher density in the core area. He noted that this project does these two things, yet, the City is looking at reducing density or rejecting the project all together. He wanted to figure out a way to allow the project to proceed at this density level as the Downtown Plan update committee would be unanimous, in the future, that this is the kind of project should be pursued by the City.

City Manager Tewes said that it is the Planning Manager's view that the application was inconsistent with the general plan as it stands today. He said that there are a number of other projects waiting for the amendments to the general plan and the zoning to take place so that they can apply in the next round of competition. He informed the Council that it will be reviewing the downtown master plan after the completion of the environmental review. Staff believes that the Council will be able to match up the general plan and zoning requirements.

Mayor Kennedy inquired whether there was a way the Council could proceed with this project.

City Attorney Leichter stated that the legally acceptable option is to allow the applicant to amend the project to reduce it to the required 10 units. Otherwise, the project is inconsistent with the general plan and zoning as they currently exist.

Mayor Pro Tempore Sellers inquired as to the implications should the Council allow the project to proceed.

City Manager Tewes indicated that staff has told a number of applicants in the same position that they had to wait until the general plan was amended to reflect the intent described before submitting their application.

Council Member Tate noted that there would be a special competition held next year for the downtown set asides.

City Manager Tewes noted that the Council gave staff direction two weeks ago to investigate whether the City could increase the number of allocations available for the downtown and to accelerate the next round of competition so that it follows soon after the general plan is amended.

Mayor Kennedy stated his concurrence with Mayor Pro Tempore Sellers that this is the type of project that is needed in the downtown and that it needs to move forward quickly. He felt that there was a way

to make this project move forward. He inquired whether there could be an emergency amendment to the general plan or any other alternative measure.

City Manager Tewes agreed that allowing this project to move forward would require an amendment to the general plan and that amendment to the general plan would require environmental review. He said that the City is moving forward with environmental review on proposed amendments to the general plan and that under this amendment, there is room to make changes. He said that the topic of housing in the downtown is the subject of the plan amendments that will be before the Council in January 2005. He indicated that Measure C units need to be allocated by March 2005. He stated that he was not aware of a procedure that authorizes an emergency general plan change.

Council Member Tate inquired whether there was a way for this project to achieve the density that they and the Council would like to achieve, incrementally, such as starting with 10-units.

City Manager Tewes said that the applicant could be authorized to redesign the project to comply with the general plan. The project would need to show a portion of the project not a part of the project with the hope that the Council would amend the general plan to allow subsequent units at a later date.

Mayor Kennedy suggested that the project be split and retain a part of the project for a phase 2 application. This would result in phase 1 being consistent with the general plan.

City Attorney Leichter said that the project would be consistent with the density requirements if the applicant was to amend the project to show 10 units as phase 1.

Planning Manager Rowe said that should the general plan not change, phase 2 of the project would need to develop as office/retail instead of the additional five units. The project could be modified to show 10 units and that with a general plan change in January 2005, the project proponent could return in the next competition for the second phase of the project.

Council Member Carr inquired whether this site can be designated as an area for higher density this evening in order to avoid a problem later on.

Council Member Tate requested that the topic of higher density be agendized for the Council's December 1 meeting.

City Manager Tewes said that the Council would be giving staff direction this evening to make sure that the options to be considered in amending the downtown master plan includes this as an opportunity site.

Mr. Weston said that it was his understanding that he could proceed with 10 units, converting the remaining 5 units to office space. He would then have to go through another Measure C process in order to convert them into apartments.

Planning Manager Rowe said that he was envisioning the project proponent showing a phased project, showing a portion of the project not a part of the application that could come back as a 5-unit project

once the general plan is amended. The project proponent could designate part of the project as office space that could be converted to residential at a future date.

Mr. Weston said that this is not a project you can develop in phases. He noted that the project design includes concrete columns/concrete platforms. Construction of this methodology would be difficult to break.

Council Member Tate did not recommend that the City dictate how the applicant is to design phase 2, and that the Council only indicate that the project is to proceed with 10 units at this time.

City Attorney Leichter did not believe that the project would be restricted as long as the 5 units met all requirements for office space. She was not sure how one would achieve this and design a residence at the same time.

Mayor Pro Tempore Sellers noted that it is the Council's desire to achieve this density level but that it may take a while to achieve.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution No. 5861A, granting the appeal, permitting the applicant to modify his proposed development to bring it into conformity with the general plan and zoning plans.*

17. APPEAL OF FINDING OF INCONSISTENCY WITH THE GENERAL PLAN AND REJECTION OF MEASURE C APPLICATION MMC-04-07. APPEAL APPLICATION, AP-04-06: GINGER-CUSTOM ONE – Resolution No. 5862

Planning Manager Rowe presented the staff report, indicating that this is a project proposed on a 1.43 acre parcel in a single family residential zoning district. The project proposes to place single family attached units on a corner lot which is permitted under the City's zoning ordinance. He indicated that last spring; the Council amended the general plan and a residential policy on the provisions of the percentage of single family versus multiple family requirements. The City amended the policy and related action under item 7.2 and that the term "multi family" was struck and replaced with the term "single family." With this change, it would not allow a duet on the corner even though the zoning ordinance allows duets on corner lots. In order for the project to be allowed to move forward, the plan would need to be amended so that the paired unit would need to be replaced with a single family detached unit. In order for the project to proceed as proposed, there needs to be an amendment to the general to include clarifying language in the action item so that it does not preclude the placement of attached units for projects that are less than 9 units in total. He did not believe that this was the intent when the general plan amendment was first processed. This would require the application to be withdrawn and resubmitted next year following the approval of a general plan amendment.

Mayor Pro Tempore Sellers said that in looking at the definition of attached units, the very first unit would not be the one that you are attaching a unit to. He noted that there is an existing unit that the

applicant proposes to attach a unit to. He felt that the second unit is the one being counted toward the 25%. He inquired whether this interpretation could be made in this case. He felt that the Council needs to modify the general plan as there is a flaw that needs to be addressed. However, he did not believe that the applicant should be penalized for a mistake made by the City. He felt that the Council could make the determination that the first unit is not attached but that it is when you attach another unit to that it becomes attached. Further, it is the unit that you are attaching that should be counted and not the two units that are attached together. This would result in one attached unit, not two units being attached.

City Attorney Leichter felt that this may be inconsistent with the definition of an attached dwelling. She said that the Council would be changing how the City interprets attached dwelling units which would not only affect this policy but would run throughout the general plan and the zoning codes. She informed the Council that staff would need time to study this issue and advise it as to the ramifications of this decision. She said that she and Planning Manager Rowe have had the opportunity to discuss this issue at length. She said that the action is precise in its language, although unintended; it is present in the general plan. The policy limits the number of single family attached units and is precise. The only option staff sees at this point is to allow the project to have one unit instead of having the attached units as the general plan language is binding.

Mayor Pro Tempore Sellers felt that until you attach a unit, he did not believe that there were attached units. Therefore, everything after the first one would be considered attached. He stated that the Council would need to go back and amend the general plan to correct an error made. He expressed concern that the City made an error and others are suffering the consequences.

Mayor Kennedy opened the public hearing.

Bill McClintock said that everyone agrees that there is an inconsistency with the way these types of development have been handled in the past. In speaking with an attorney earlier today, it is felt that there are issues with zoning when it is not in conformance with the general plan. In this case, the general plan would govern. He said that six months ago, the City had a general plan that had an action item consistent with the general plan policy of encouraging projects to use multiple housing types; specifically five or more units. If the City could state that for small projects, the action item is inconsistent with the general plan goal, the Council could throw the action item out for projects that are less than eight units; allowing them to be consistent. He felt that the Council would be making the interpretation that the project is consistent with the general plan policy. As the action item was implemented recently, the Council could throw out the action on these projects.

City Attorney Leichter felt that the precept being referred to by Mr. McClintock is that if the zoning was inconsistent with the general plan, it would be subservient to the general plan and the zoning would be declared to be invalid. If there is inconsistency within the general plan itself, she indicated that California law is clear that discretion is vested in the City Council to determine the extent of the inconsistency. She stated that it is staff's and her opinion that this action is not inconsistent with the policy. She indicated that the policy is stated in broad terms as encouraging a mix of housing with projects of five or more units. She did not believe that this was necessarily inconsistent as not every action has to further every single policy as stated in the general plan.

Mayor Pro Tempore Sellers inquired whether the Council has the latitude to rule that the action item is inconsistent with the general plan in this case.

City Attorney Leichter stated that it is staff's belief that the action is consistent with the general plan policy. She said that if you look at the rest of the policies under Goal 7, it further points out a number of actions. She stated that not every action furthers every single policy and are not in direct conflict with the policy. She said that it is the unique definition of attached housing in terms of the precedent that it would establish for this competition and future competitions. She felt that some of the policies could be corrected with an amendment to the general plan.

Mr. McClintock indicated that the applicant has another proposal to submit should the Council not have the discretion to declare the action item inconsistent with the general plan. He indicated that the applicant would submit a duplex project that would not change the score in anyway, resulting in a multi family unit and not a single family attached unit. He noted that these units would not be built for two years. In the meantime, the general plan would be amended to allow this type of project at which time the applicant could return with duet units.

Gary Walton, applicant, felt that he was being penalized for a poorly worded action item in the general plan. He said that he tried to provide diversity in housing units; indicating that he could have designed five single family homes on the property and did not have a need for the duet unit. He did not believe that it was fair that he should have to lose a unit for a poorly worded action item. If it is easier, he would propose a duplex unit.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution No. 5862A granting the appeal, amending section 1 to replace one single family attached unit with a duplex unit.*

18. APPEAL OF FINDING OF INCONSISTENCY WITH THE GENERAL PLAN AND REJECTION OF MEASURE C APPLICATION MMC-04-09. APPEAL APPLICATION, AP-04-08: TAYLOR-MURRAY – Resolution No. 5863

Planning Manager Rowe presented the staff report, indicating that this is the same situation with an attached unit on a corner lot as identified with item 17.

Mayor Kennedy opened the public hearing.

Scott Murray offered the same argument as those offered by Mr. Walton for a corner lot. He requested Council consideration of a duplex unit.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution No. 5863A, amending section 1 to allow a duplex unit on a corner lot.*

19. APPEAL OF FINDING OF INCONSISTENCY WITH THE GENERAL PLAN AND REJECTION OF MEASURE C APPLICATION MC-04-10: EAST DUNNE-KRUSE – Resolution No. 5864

Planning Manager Rowe presented the staff report, indicating that the project is a 7-lot subdivision on just under a 40 acre parcel located north of the intersection of East Dunne Avenue and Thomas Grade. He stated that five of the lots are in excess of five acres and two are less than 1.4 acres. He said that the general plan and zoning designation on the property is open space with minimum lot requirements of five acres. In order to confirm to the current general plan and zoning, all lots would need to be a minimum of five acres. In addition to finding of consistency, he stated that the property is outside of the city's urban service area. He said that Measure C prohibits the extension of urban services for residences beyond the urban service area unless a prior agreement existed to provide services, or denial would constitute an adverse impact on public health and safety. He indicated that the City is not dealing with an existing development in this case and therefore the second part would not apply. He informed the Council that the applicant is appealing on two grounds, noting that the appellant addressed three issues, the third one which deals with the Williamson Act that is not germane to whether the City accepted the application or not. The first ground references action 1.6 of the Open Space element that requires the City to allow planned clustered development. As the City's zoning ordinance currently does not have provisions to allow for planned clustered development, the applicant contends that the general plan takes precedence in this instance and that the project should be allowed to proceed. With respect to services outside the urban service area, the applicant cites a 1991 settlement agreement that exempts the parcel from LAFCo for provisions of water and sewer service. Staff believes that this contention may be supportable, but only for the four lots that are addressed in the settlement agreement. He noted that the application is for seven lots and that there remains a question about extension of urban services to residences for the additional three dwelling units that are currently outside the urban service area, in violation of Measure C.

With regard to the action items relating to policies, Planning Manager Rowe stated that the specific item states that the City is to use a variety of open space preservation tools to protect open space in the City, including public acquisition of land, land use regulations, urban development policies, economic incentives to land owners, open space easements, transfer of development rights, planned clustered development, assessment districts, etc. He said that it is the applicant's argument that the paragraph should be interpreted that the City must use every single tool listed for the protection of open space. Staff does not believe that this is the intent of the language in the action item. The action item states that the City should use a variety of tools. He indicated that some of the tools are being looked at in conjunction with the establishment of the urban limit line and greenbelt areas. Staff contends that the policy is consistent with the general plan even though the zoning ordinance does not have provisions for planned clustered development for zoning as an open space preservation tool at this time. He said that the Council may conclude that clustered development may not be applicable because the City is transferring development from a hillside to another portion of the hillside and not really accomplishing the objectives to which it is seeking. With respect to the extension of services beyond the urban service

areas, he stated that LAFCo approval is not required because the settlement agreement was executed in 1991, prior to the change in state law in 1994 which required LAFCo approval for the extensions of services beyond the service boundary. He said that the settlement agreement only applies to the four lots and not the three additional lots being proposed. He informed the Council that staff attached a letter dated November 16, 2004 as well as an argument that has been brought forth relating to the settlement agreement. It is stated that in addition to ensuring provisions of water and sewer services to four lots, should be interpreted to exempt the four lots from having to secure building allotments through the RDSCS. He said that this was not an item that was included in the appeal application and that staff did not have the opportunity to address it. It is staff's belief that the specifics of the appeal hearing this evening would need to be focused on the issues that were brought before the Council: 1) consistency with the general plan with respect to the planned cluster zoning issues; and 2) the provision of sewer and water services pursuant to the settlement agreement.

Council Member Tate stated that there is a potential solution to approving four lots, noting that there are only five lots over five acres. He inquired whether the applicant could redraw the lines to achieve a four lot subdivision.

Planning Manager Rowe responded that the applicant is proposing a seven lot subdivision. The applicant is proposing to create two lots under the five acre minimum and that extension of sewer and water services would result in extension beyond the City's urban services area. However, in consultation with the City Attorney, it is noted that the City and the applicant have a prior agreement that would allow for the extension of services to serve a maximum of four lots. He said that the map would need to be withdrawn so that the project would not contain the two non conforming parcels.

Mayor Kennedy opened the public hearing.

Craig van Keulen, representing the Kruse family, clarified that the City approached the Kruse family in 1989 to request their help with regards to acquiring property in order to install a booster pump station on their property. He stated that the Kruse family cooperated and that communication was minimal until just before the agreement was presented to them and executed in December 1990. At the time they were first approached, the property was subject to Measure E where there were no restrictions with four lot subdivisions. He informed the Council that this was the understanding that the Kruse family had when they negotiated with the City. He informed the Council that he just received a copy of a letter that Neil Kruse sent to Don Lowry, the City's consultant, at the time for land acquisition. The letter includes a condition that he be allowed three additional permit allowances for three houses as well as possible sewer. He noted that the letter was dated in late November 1990 and the agreement was signed by the Kruse family on December 11, 1990 because the City wanted to move forward. This agreement was supposed to reflect the party's intention that they would receive sewer on three additional lots in addition to the existing lot in order to satisfy their needs in exchange for providing a portion of land for the booster pump station. He said that the semantics of the agreement did not conform to what they understood the intent to be, thus the dispute that the Kruse family has to come back under the RDSC system to receive their four lots outside of the Measure C process. He stated that it is his position that the Kruse family should be allowed start with four lots as called for in the agreement and that they are applying for three additional lots.

Mr. Van Keulen said that this piece of property was one of the anomalies that the general plan task force tried to eliminate a couple of years ago where property is inside the city limits but outside the urban service area. Yet, the property has city water and services. Therefore, this is not an expansion of city services. He said that this is a piece of property that the general plan task force tried to take care of but that it did not get resolved. With regards to policy 1.d referred to by Planning Manager Rowe and clustered development, he noted that it states that a variety of methods “shall” be used. He felt that this is mandatory language that requires the variety of methods to be used. He felt that this would go toward the requirement that clustered development take priority over some other type of inconsistency with regards to land use. Further, he felt that the City needs to make sure that citizens are comfortable dealing with the City in a straight forward manner and not have to engage counsel to represent them every step of the way. He did not believe that this was the intent in this case, and felt that the benefit of the doubt should go to the homeowner who thought he was receiving something when the agreement was prepared. Perhaps, it may have turned out that they may have been some ambiguity. If so, he felt that the ambiguity should fall to the benefit of the land owner.

City Attorney Leichter said that whether or not the right of way agreement exempts this property from Measure C is not the basis of appeal before the Council this evening as it was not included in the appeal letter. She stated that the history of the property and its interaction with the City is more extensive than what Mr. van Keulen has alluded to. She noted that Measure P passed one month before the Kruse family signed the right of way agreement. There was extended negotiations and that the Kruse family was paid \$17,000 for the property for the right to situate a pump on their property. She said that the agreement was contingent upon the Kruse family receiving money. She indicated that paragraph 9 of the agreement states that the City would give favorable consideration to the subdivision of four parcels consisting of 10 acres each; consistent with the City’s zoning plans in affect at the time of application. She stated that the agreement does not state that the City would guarantee approval of four lots. She said that later on the Kruse family had some concerns about the agreement. She said that there has been extensive discussions and correspondence between the City and the Kruse family in 1991. In April 1991, Mr. Kruse sent a letter to the City stating that he wanted three additional lots approved with additional water and sewer service. After a series of meetings and correspondence from Cyrus Kianpour in the public works department, this lead to the signing of the agreement that was approved by the City Council in January 1991 and signed by the City Manager in August 1991. The Kruse family then filed a lawsuit against the City for inverse condemnation in 1992. She stated that this matter was resolved by the issuance of check to the Kruse family in the amount of \$3,000. The issue of whether they were exempt from Measure P was a focal point of the lawsuit that was dropped by the Kruse family in exchange for \$3,000. She said that she could not speak to whether or not the Kruse family believed that they were adequately compensated, but that there was a long history of interaction between the City and the Kruse family on this project. The issue of whether the property is exempt from any growth control initiative is one that is brought up time and time again.

Mr. van Keulen said that when he spoke with City Attorney Leichter earlier today, he inquired whether there was any type of settlement agreement. He was advised by the City Attorney that there was no settlement agreement.

City Attorney Leichter clarified that she stated that she did not have a copy of a settlement agreement but that she was aware that a check was issued to the Kruse family. She indicated that she advised Mr.

van Keulen that she did not know if the matter was settled pursuant to an agreement and that she could not find a copy of a settlement agreement.

Mr. van Keulen stated that as far as he was aware, there is no settlement agreement between the City and the Kruse family. He is aware that there was a dismissal of the case. He said that this was the first time he has heard that a check was paid to the Kruse family. He felt that the issue was that there was an intent between the parties as to what the arrangement was supposed to be. He submitted a copy of a letter that predated the agreement by approximately one or two weeks. The information he circulated included the draft of the agreement and the execution of the agreement. He stated that the letter does not talk about conditional use in terms of going through a residential process. The letter addresses the three units and the provision of sewer and water. He said that a lay person will not know what the language means in a document they receive from a City. They assume that the agreement means what they asked it to mean. He requested that the Council consider this fact.

Bill McClintock stated that the transfer of density was represented by staff to state that it was coming from hillside to hillside. He felt that this was a misinterpretation of what the plan is showing. He clarified that most of the property is over 20% slope. The areas that are less than 20% slope are shown at the bottom of the property. He said that it was the intent to move the density, 8 units, down into the areas that are less than 20% in slope. He stated that each of the building sites were analyzed in order to meet the hillside slope ordinance. He said that the proposed units are no longer on the hillside but in a location that meets the hillside ordinance based on the lot sizes required. He felt that it was appropriate to take the density off the hillside and move them to flatter areas and utilize as much land as possible without requiring the 5 acre minimum. He addressed the two lots that do not meet the five acre minimum zoning standards, indicating that the lot layout was designed because they did not want the road to be next to the existing homes. It also created a buffer between the homes, the road and the existing development. He noted that you could not place the road any higher on the hillside to create five acre lots required by the zoning district. He felt that Mr. van Keulen was correct in his interpretation of policy 1.d that states that a variety of methods 'shall' be used to retain open space and at the same time respect the needs and rights of the property owner. The action states that a developer is to use a variety of open space preservation tools in order to protect open space that includes a list of mitigations. He requested that the Council allow the application to be processed with four lots. The applicant could return to the City seeking urban service area expansion on the bottom area, returning with another application to further subdivide the property.

City Attorney Leichter stated that the policy states that a variety of methods shall be used. The action item lists a variety of tools that could be applied. If Mr. McClintock is arguing that the City must consider planned clustered development, she felt that Mr. McClintock assumes that the City should, upon the same parcel, by his logic, impose public acquisition, land use regulation, provide economic incentives to land owners, take open space easements, transfer development rights, and impose an assessment district in order to preserve open space. She felt that this would be a logical extension of Mr. McClintock's thinking in that the City must use every single tool stated on the general plan on this particular parcel. She was assuming that it was not Mr. McClintock's argument that the City should impose an assessment district or an open space easement on the property, even though the plan states that this is one of the tools the City must use.

Mr. McClintock clarified that he was not inferring that the City must use every tool on this property. He felt that the zoning code includes all of the provisions. However, the City does not have to apply them all to this parcel. He noted that Planning Manager Rowe cited the California Constitution Zoning and Planning, and that the City could do anything it wants. If the City wants the property to cluster development, the City has the power to do so.

City Attorney Leichter said that the City could suggest clustering but that it does not have to require clustering of the lots.

Mr. McClintock felt that clustering of the lots was an appropriate tool in this particular case. He said that there are many communities that have cluster ordinances and felt that they are useful in this situation.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers felt that a logical solution was offered by Mr. McClintock in that the application could be modified to request four lots.

Council Member Tate indicated that there was a lot of history associated with the property and that the Council was provided a packet of information late this afternoon. He stated that he was not familiar with all the history and that he has not had the opportunity to read through the material provided. However, if there is an acceptable solution that the Council can approve this evening, he would like to move forward with it.

Planning Manager Rowe noted that Mr. McClintock was suggesting a 3-4 lot subdivision of approximately 10 acres each with two under 5 acres. He said that staff is recommending that the lot sizes be increased to a minimum of 5 acres each.

City Attorney Leichter noted that the agreement stipulates four, 10-acre lots to qualify for the sewer allocation. However, you only need a five acre minimum to qualify under Measure C.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution No. 5864A, granting the appeal, amending Section 1 to stipulate a four lot subdivision with a minimum of 10-acres each.*

City Manager Tewes indicated that Measure C is very complicated and that its strict language posed some problems with its administration and posed challenges for the Council this evening. He said that there are only a handful of individuals in the community who understand the complexity of Measure C. He said that this is a competitive process and that many of the applications considered this evening did not take advantage of a free opportunity to meet with staff well in advance of the application deadline to learn about potential problems. When the City receives the applications on the last day of submittal, the City is bound by the literal language of Measure C and thus the reason for the appeals. He recommended that anyone considering applying for Measure C allocations in the future to take advantage of the opportunity to meet with staff in advance to share ideas and to learn about potential problems.

City Council Agency Action

OTHER BUSINESS:

21. INTERIM USE PERMIT, UP-04-07: DEPOT-DAY WORKER CENTER

Planning Manager Rowe presented the staff report, indicating that in order to ensure that the day worker project site is restored to its pre development condition; the property owners are requesting Council approval of a new condition that would require the applicant to return the site to its original condition no more than 30-days after exiting the property. He informed the Council that staff spoke with Julian Mancias, a representative with the day workers committee, who has indicated that they would not have a problem with the 30-day requirement. In addition to the 30-day site restoration requirement, he stated that the property owners are requesting that the Council require the applicant to bond for the restoration and clean-up of the site. Staff spoke with Mr. Mancias about this request and that staff was advised that Mr. Mancias would have to consult with the day workers committee and research the cost for bonding. He stated that staff is requesting direction from the Council this evening on whether or not it would request the bonding requirement in addition to the 30-day site restoration condition.

Mayor Kennedy opened the floor to public comment.

Charles Weston indicated that the request for bonding is to ensure that the site is cleared without him having to clean it and incur additional expenses. He indicated that the bond would cost the dayworker committee \$8 per \$1,000. He estimates that the dayworker committee would need a bond of approximately \$40,000. This would equate in a bond costing approximately \$250 per year. He stated that he spoke with Mr. Mancias about bonding costs and that Mr. Mancias informed him that he did not have a problem paying for the bond.

Julian Mancias stated that the dayworker committee is committed to cleaning the site 30 days after vacating the site. He felt that bonding would be a low cost item but that he would need to research the cost for bonding and discuss the issue with the Diocese and St. Catherine's Church.

Mr. Weston said that if anything should change with the dayworker situation it would be onerous on him to clean up the site knowing that the dayworker committee does not have the funds to clean up the site. He estimated that it would cost \$30,000-\$40,000 to clean up the site. He would like to have some security that he would not have to pay for the clean up of the property as he has spent a lot of time and money to make the dayworker center happen. He did not believe that bonding for clean up of the site was a financial burden for the dayworker committee to come up as it would cost \$500 over the next 1-2 years to guarantee a little financial stability on the property.

No further comments were offered.

Mayor Pro Tempore Sellers felt that it was reasonable to require the applicant to bond for clean up of the site. If it is found to be too onerous of a burden for the dayworker committee, they can return to the Council.

Council Member Carr recommended that the bonding cost not exceed \$250 per year. He stated that he was surprised that the City did not require bonding for clean up of the site when it required the exit plan.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Directed** that the applicant post a bond to Ensure Restoration and Clean Up of the site, not to exceed \$250 per year.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution No. 5865, Amending Resolution No. 5803 Requiring the Dayworker Committee to Return the Site to its Original Condition 30 days After Exiting the Site.*

22. MEMORANDUM OF UNDERSTANDING (MOU) FOR WORKFORCE INVESTMENT ACT SERVICES

Business Assistance and Housing Services Director Toy presented the staff report, indicating that staff supports the MOU for the City of San Jose to act as the administrator of services for the Silicon Valley Workforce Investment Board (WIB). He stated that staff is seeking direction on the nomination of an individual to serve on the Board or the Youth Council. He said that the Board was established for the purpose of providing strategic planning and oversight of the local workforce investment systems. He said that Morgan Hill is part of the Silicon Valley Workforce Investment Area. The purpose of the MOU is to coordinate workforce development services by carrying out job training employment programs within a one-stop service delivery system. He clarified that the City of Morgan Hill would not be responsible for any of the costs incurred to administer the WIB. Staff recommends Council approval of the MOU because staff does not have the expertise or resources to administer these services. Further, this is a regional effort and that the City of San Jose is the best choice to administer this program. He stated that the City may nominate one person to be appointed to the WIB and youth council, a subgroup of the WIB task force that develops policies for strategies in providing services to youth. Typically, the person appointed is from the private industry or from a non profit organization. He informed the Council that he had a discussion with Chamber of Commerce Executive Director Dan Erhler and Susan Wolfe with the WIB who indicate that in some cities, they ask the Chamber of Commerce to appoint a business representative or recommend a person to the agency or city for appointment. This allows the Chamber of Commerce to be engaged and develop a relationship with the WIB. It was staff's belief that this is a good idea.

Mayor Kennedy opened the floor to public comment.

Susan Wolfe, representing the Workforce Investment Board, indicated that the Board is comprised of several subcommittees, one of which is the youth council. She stated that whomever the Council appoints would be asked to pick a subcommittee to which the youth council is one that is listed. She indicated that the board is comprised of 40 members.

Dan Ehrler, Chamber of Commerce Executive Director, informed the Council that in the City of El Segundo, the Chamber of Commerce board of directors forwarded a recommendation to the City Council for appointment from the private sector. He indicated that this system worked well as the Council would receive the nomination and take the appropriate actions. He suggested that the Chamber of Commerce act as the facilitator for the nomination process. When there is an opening on the Board, WIB would notify the Chamber of Commerce and that the Chamber's Board would find someone willing to serve on that board for a particular term. The Chamber would forward the nomination to the Council for consideration.

No further comments were offered.

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Authorized** the City Manager to do Everything Necessary, Including Making Modifications to the MOU, Subject to Legal Review, to Execute an MOU with the City of San Jose to Act as the Administrator of Services for the Silicon Valley Workforce Investment Board.*

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Directed** staff on the Process for Nominating a Person to be Appointed to Workforce Investment Board or its Youth Council by allowing the Chamber of Commerce to facilitate the nomination process for Council consideration.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Carr recommended that the review/rotation of Council outside committee assignments be deferred from the scheduled December 15, 2004 meeting until after the Council's annual goal setting session/retreat. He requested that this topic be agendized for the Council's December 1, 2004 meeting for discussion.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:58 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY